



The State of New Hampshire
Insurance Department
21 South Fruit Street, Suite 14
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Roger A. Seigny
Commissioner

Alexander K. Feldvebel
Deputy Commissioner

BULLETIN
Docket No.: INS No. 08-030-AB

TO: All Life Insurance Companies Licensed to do Business in New Hampshire and
Licensed Producers with Lines of Authority in Life and Variable Annuities

FROM: Roger A. Seigny
Insurance Commissioner

A handwritten signature in black ink, appearing to read "RAS", is placed above the "FROM:" line.

DATE: May 1, 2008

RE: Clarification of the Impact of Civil Union Law and Annuity Contracts

Pursuant to Bulletin INS 07-088-AB, *Implementation of New Hampshire's Civil Union Law*, RSA 457-A:6, all insurers are required to make appropriate filings to amend policies and other forms to provide the same benefits to those joined in civil union as are provided to those joined in marriage. Industry representatives have raised concerns regarding the amendment of annuity contracts, specifically, provisions in annuity contracts that relate to federal tax law, I.R.C § 72(s).

The Defense of Marriage Act (DOMA) at 1 U.S.C.A. §7 excludes civil unions and civil union partners from the meaning of the word "marriage" or "spouse" respectively in all federal laws. Therefore, under federal tax law, a civil union partner cannot benefit from the same tax advantages provided to a spouse.

New Hampshire's civil union law does not alter federal law. While civil union partners are afforded the same rights as married couples under state law, civil union partners would not be permitted the same federal tax benefits afforded to the surviving spouse of an owner of an annuity, including the benefits under I.R.C. § 72(s). Therefore, the Department will not approve filings that mislead consumers by stating or implying that a surviving partner to civil union is entitled to federal tax benefits afforded only to a surviving spouse.

However, all annuity filings must otherwise conform with RSA 457-A and INS 07-088-AB. The rights of civil union partners to all benefits afforded to married couples must be reflected in the policy in all provisions in which the rights of a civil union partner are not limited by the DOMA. For example, if the insured has named no surviving beneficiary and the policy provides for payment of death benefits first to surviving spouse if any, then the policy must be amended to provide for payment of death benefits to the surviving spouse *or partner to a civil union*, if any.

To provide appropriate language to consumers in regard to the DOMA and annuity products, the Department will require that every annuity contract, certificate, amendment, endorsement provided to a consumer or insured provide the following disclosure:

The Federal Defense of Marriage Act states that civil union partners are not considered married under federal law. Therefore the favorable tax treatment provided by federal tax law to a surviving spouse is NOT available to a surviving civil union partner.

For information regarding federal tax laws please consult a tax advisor.

Any questions regarding this bulletin can be directed to Michael O. Wilkey at Michael.Wilkey@ins.nh.gov.